

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 977 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G C SABHNANI

Versus

SECRETARY AND/OR HIS SUCCESSOR

Appearance:

MR DS VASAVADA for Petitioners
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/10/1999

ORAL JUDGEMENT

Heard the learned counsel for the petitioners.

2. Here the prayer has been made by the petitioners that though the petitioner No.1 completed nine years satisfactory services on 2-5-1975 and had opted for grant of higher grade under GSO 253 w.e.f. 3-5-1975, he has been granted this benefit from 1-1-1979, which is wholly arbitrary and unjustified.

3. It is the say of the petitioners that in the confidential report of the petitioner No.1 for the year 1971-72 adverse remarks were given but on his representation subsequently the same were expunged. Though for the year 1974-75 he was communicated with the adverse remarks on 15-6-1979 but his representation filed against the same has not been decided. In this factual matrix, the petitioners are claiming that the respondents may be directed to give the petitioner No.1 the benefit of higher grade w.e.f. 3-5-1975.

4. Reply to the special civil application has been filed by the respondent and therefrom I find that the respondent has admitted that the petitioner No.1 completed nine years services on 2-5-1975 and he demanded the benefit of higher grade w.e.f. 3-5-1975. It is also not in dispute that the petitioner No.1 has been given the benefit of higher grade from 1-1-1979. From documents, annexure C and D enclosed to the reply I find that for the year 1973-74 there are some adverse remarks reported against the petitioner, which reads as under:

Some persons do not like his nature of at speaking.

5. However, from the statement annexure 'D' I find that those adverse remarks were not communicated to the petitioner. For the year 1974-75, there are adverse remarks, which reads as under:

- (i) To some extent trustworthy and integrity.
- (ii) His supervision over the work done by staff not upto the mark and requires to exercise strict watch over his subordinates.

6. These adverse remarks for the year 1974-75 were communicated to the petitioner vide memo dated 15th June, 1979 i.e. after more than four years and three months of the last date of the year. The petitioner filed representation against that adverse remarks after five years of the communication and same were reported to be rejected on 27th December, 1984.

7. The higher grade benefits have been granted to the petitioner under the order dated 6-12-1979 w.e.f. 1-1-1979. The delay in communication of the adverse remarks in all the cases may not render the action of the respondents to be invalid but if we go by the facts of this case, I find that this delay in communication of the adverse remarks has adversely affected the right of the petitioner. The adverse remarks in the A.C.R. of

1973-74 were not communicated to the petitioner and as such the same could not have been taken into consideration. However, the adverse remarks for the year 1974-75 are not of serious nature. It is not the case of the respondent that his integrity was found to be doubtful. Contrary to it, he was taken to be a trustworthy person and a person of integrity. Second remark i.e. supervision over the work done by the staff is not upto the mark and requires to exercise strict watch over his subordinates, is not that much of serious where he could have been denied the benefit of higher grade by communicating that remarks after more than four years and three months.

8. Taking into consideration the totality of the facts of this case coupled with the fact that the adverse remarks for the year 1974-75 have been communicated after more than four years, the decision taken to deny the benefit of higher grade to the petitioner w.e.f. 3-5-1975 is wholly arbitrary and unjustified and it cannot be allowed to stand.

9. As a result of the aforesaid discussion, this petition succeeds and it is hereby declared that the decision of the Board not to grant higher grade benefit to the petitioner No.1 w.e.f. 3-5-1975 is wholly arbitrary and unjustified. As a result of this declaration, the petitioner No.1 shall be entitled for all the consequential benefits which follows therefrom. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-